

**38 CFR Part 38****RIN 2900-AR43****Requesting Disinterment of an Eligible Decedent from a National Cemetery**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its regulations governing disinterment of eligible decedents interred in VA national cemeteries to clarify that, if the individual who initiated the interment does not consent to a disinterment or is not alive to provide consent, or all living immediate family members are not in agreement, anyone seeking disinterment of an eligible decedent must obtain an order from a court or State instrumentality of competent jurisdiction to direct the disinterment.

**DATES:** This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Alan Amelinckx, Management and Program Analyst, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: 202-461-5658 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On February 9, 2022, VA published in the Federal Register (87 FR 7402) a proposed rule revising its regulation to clarify that disinterment from a national cemetery will be approved only when a court order or State instrumentality of competent jurisdiction directs the disinterment, or when all living immediate family members of the decedent, and the individual who initiated the interment (whether or not the individual is a member of the immediate family), give their written consent. The public comment period ended on April 11, 2022. VA received one comment that generally supported the rule but expressed concern about costs

associated for claimants requesting disinterment. The commenter restated VA's Paperwork Reduction Act burden analysis and advised VA to include those costs on VA Form 40-4970, Request for Disinterment, to avoid negative outcomes for families who would incur those costs. We clarify that the burden analysis is required to justify the collection of information and inform the public of the time and cost of the public's time in providing the information. Those "costs" are not transferred to individuals seeking to request disinterment through the submission of VA Form 40-4970. The revision to the form, which is currently approved by the Office of Management and Budget (OMB) under OMB control number 2900-0365, will not result in any increase or decrease in respondents, respondent burden hours, or respondent burden costs. Therefore, VA makes no changes based on the comment.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will have no significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). This certification is justified because most disinterment requests are submitted by families. Although a local court or State instrumentality may be involved if all living family members do not consent to a contemplated disinterment request, or the individual who initiated the interment does not consent to the disinterment or is not alive to provide consent, processing and adjudicating a request for disinterment as directed by a court order or State instrumentality would likely be rare and would be conducted as part of that entity's routine operations. VA cannot estimate the number of entities that may be affected by this final rule given that each disinterment case is based on the unique needs of families. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Paperwork Reduction Act

This final rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44

U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval. OMB has reviewed and approved this revised collection of information and assigned OMB control number 2900-0365.

#### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

## List of Subjects in 38 CFR part 38

Administrative practice and procedure, Cemeteries, Claims, Crime, Veterans.

## Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 10, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

## **Luvenia Potts**

*Regulation Development Coordinator,  
Office of Regulation Policy & Management,  
Office of General Counsel,  
Department of Veterans Affairs.*

For the reasons set forth in the preamble, VA amends 38 CFR part 38 as set forth below:

## **PART 38 – NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS**

1. The authority citation for part 38 continues to read as follows:

AUTHORITY: 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

2. Revise § 38.621 to read as follows:

### **§ 38.621 Disinterments.**

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery District Executive Director or

Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when:

(1) A court order or State instrumentality of competent jurisdiction directs the disinterment; or

(2) All living immediate family members of the decedent, and the individual who initiated the interment (whether or not the individual is a member of the immediate family), give their written consent.

(i) If the individual who initiated the interment does not consent, or is not alive to provide consent, or all living immediate family members are not in agreement, anyone seeking disinterment of an eligible decedent must provide VA with an order from a court or State instrumentality of competent jurisdiction to direct the disinterment as provided in paragraph (a)(1) of this section.

(ii) For purposes of this section, "immediate family members" are defined as surviving spouse, whether or not he or she is or was remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent's parents will be considered "immediate family members."

(b)(1) All requests to disinter remains as described in paragraph (a)(2) of this section must be submitted on VA Form 40-4970, Request for Disinterment, and must include the following information:

(i) A full statement of reasons for the proposed disinterment.

(ii) Notarized statement(s) by all living immediate family members of the decedent, and by the person who initiated the interment (whether or not the individual is a member of the immediate family), that all parties consent to the proposed disinterment.

(iii) A notarized statement by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased and the individual who initiated the interment.

(2) If the person provides a false certification on VA Form 40-4970, he or she may be subject to penalties, to include fine or imprisonment or both.

(c) Any VA-approved disinterment in this section must be accomplished without expense to the Government.

(The reporting and recordkeeping requirements contained in paragraph (b) of this section have been approved by the Office of Management and Budget under OMB control number 2900-0365)

(Authority: 38 U.S.C. 2404)

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